

7 ELIGIBILITY ISSUES

The Social Security Act requires that unemployment insurance benefits be promptly paid to an individual when due, but it is the responsibility of the Department to ensure that benefits are only paid to those claimants who are eligible. To meet this requirement, we must investigate all eligibility issues which could suspend, reduce or cancel benefits, obtaining and recording the information necessary to determine the claimant's eligibility regardless of its source.

Your Responsibility

The Department is unaware of eligibility issues unless someone brings them to our attention. The claimant is asked questions that would alert us to eligibility issues when (s)he makes an initial claim application and when (s)he files a weekly certification for benefits. However, we rely heavily on employers to verify information from the claimant and to bring other eligibility issues to our attention. The most common method that employers use to notify us about eligibility issues is completing and returning a required report which includes information about the eligibility issue (see Part 5). However, you may call or write to us at any time to raise an eligibility issue. The telephone numbers and addresses for our benefit centers are listed on the back of the handbook. **Be sure to include the claimant's social security number and your UI account number in any correspondence.**

It is important for you to bring eligibility issues to our attention in a timely manner, even when your account is not currently liable for benefits paid to the claimant. If you have submitted a required benefit report and neglected to raise an eligibility question on the report itself, you should contact the UI benefit center shown on the report as soon as you recognize your error. (If you did not keep a copy of the report, call one of the benefit center numbers on the back of the handbook.) Provide all supporting facts which pertain to the issue you are raising. If you take action to notify us immediately, you will reduce the likelihood of our paying benefits erroneously to the claimant. (See Part 5 for information about the effect of raising a late eligibility issue on your UI account.)

The Procedure

When an eligibility issue is raised, a fact-finding investigation is conducted and the claimant is always given an opportunity to give a statement about the issue. Usually we need additional information from employers to resolve the issue. If the issue being investigated is a discharge, we often send a letter to the employer before the claimant's interview to find out why the claimant was discharged, what prior incidents, if any, were also a factor, if progressive discipline was used, etc. The adjudicator may also follow-up the letter with a telephone call for clarification. The claimant can then respond to the specific allegations the employer has made when (s)he gives a statement.

Once all of the facts are gathered a written determination will be mailed to you if you are considered the party of interest. The employer party of interest is the employer whose interests may be adversely affected by an agency decision regarding the claimant's eligibility for benefits. It may be the employer who is a party to the issue or the currently liable employer. A copy of a written determination can be found in Part 9 of this section. If you or the claimant feel the decision is incorrect, you both have the right to appeal the decision and request a hearing. (See Section 3 for details about the appeal process.)

The Issues

The following pages contain an alphabetical listing of the most common eligibility issues that may result in a denial, suspension or reduction of benefits and the type of supporting facts needed for these issues. The appropriate statute section is cited. More than one eligibility issue may apply to a claimant. If so, when you are raising a question of eligibility, be sure to indicate all eligibility issues that apply and include supporting facts for each one.

A. 35 HOURS OF PAY FOR A CLAIMED WEEK

Section 108.05(3)(b)

The claimant is ineligible for benefits for a given week if:

- you paid at least 80% of the claimant's base period wages,
- the claimant was employed by you in the week in question and **worked, was paid or could have been paid had (s)he performed all available work**, for a total of 35 or more hours in the week, **and**
- the claimant's base rate of pay (excluding bonuses, incentives, overtime or any other supplements) for these hours was the same or greater than the base rate of pay you paid the claimant in the high quarter of his/her base period.

B. 40 HOURS OF WORK IN A CLAIMED WEEK

Section 108.05(3)(c)

The claimant is ineligible for benefits for any given week in which (s)he **works** a total of 40 or more hours for one or more employers.

C. DISCHARGE

Section 108.04(5)

The only time UI benefits will NOT be paid to a discharged employee is if the discharge is found to be for misconduct.

As an employer you may have valid business reasons to discharge an employee. However, for UI purposes, those reasons may not result in a finding of misconduct. Misconduct exists only when an employee's work behavior shows a wilful and substantial disregard of the employer's interests or expected standards of behavior.

Not Misconduct

It is not considered misconduct if the employee has performed assigned work to the best of his/her ability but simply cannot meet the employer's standards or needs. This is because there can be no finding of wilful and substantial disregard of the employer's interests.

Similarly, single isolated incidents of poor judgment or ordinary carelessness, by themselves, are generally not considered misconduct.

Misconduct Discharges

The burden for establishing misconduct is upon the employer. In making a ruling the Department looks at three things: 1) was there unacceptable behavior, 2) was there, or could there have been an adverse effect on the employer, and 3) was the discharge caused by the cited behavior.

Work Rules

Employer work rules play an important part in a discharge investigation. Rules must be reasonable, known to the employee and consistently enforced. The breaking of a reasonable work rule does not assure a finding of misconduct. An example would be violations of attendance policy. Employers may choose to discharge employees because of the number of absences or tardies. In making its decision, the Department will consider the reasons for the absences and tardies as well as the number. If the employee has been absent or tardy for good reason, such as illness, and the absences were with notice to the employer, there can be no finding of wilful disregard of the employer's interest and therefore no finding of misconduct.

Warnings

An employee must know that (s)he is in danger of losing his/her job. When work rules are broken employees should be warned. Warnings should be given even if the rule infraction is obvious, such as violations of attendance policy. The employee should be told, 1) what rule has been broken, 2) how (s)he broke the rule, 3) what the employee can do to make a correction, and 4) ramifications if there is no improvement, no correction or for repeating the behavior. (S)he should then be given an opportunity to correct the inappropriate behavior. Warnings may be written or verbal. A detailed record of infractions and warnings should be maintained. The record of warnings should include the date(s) of rule infraction(s), the rule that was broken, and the date of the warning.

Progressive Discipline

Progressive discipline policies should be adhered to by all parties. For instance, an employer who discharges an employee when the policy calls for a final warning is in danger of having the discharge ruled as being not for misconduct. Be prepared to provide a copy of the progressive discipline policy along with the list of infractions and warnings that resulted in the discharge.

Illegal Drugs and the Workplace

The use of unauthorized controlled substances can lead to a misconduct discharge. The use of controlled substances is verified by a drug test. Drug testing may be either random or incident based.

- **Random Drug Testing**

Misconduct will be found when the employee, as the result of a random drug test, tests positive to a controlled substance, and: **1)** the employer has a reasonable rule which prohibits the use of illegal drugs both at work and away from work, **2)** the rule is provided in writing and known to the employee, **3)** the rule tells the consequences of a positive drug test, and **4)** the test is valid.

Reasonable rules fall into two categories.

1. The rule is written and made available to the employee.
2. The rule is mandated by state or federal law and the employee is aware of the mandate and has a copy of both the mandate and the rule.

In both cases the rule must tell the provisions of the rule and the consequences of a positive drug test.

A valid drug test is one that is conducted under the guidelines established by either the US Department of Health and Human Services, or the Wisconsin State Lab of Hygiene.

- **Incident Based Drug Testing**

Whether the employer drug rule refers to just at work use and/or possession, or follows the broader wording which prohibits the use of controlled substances

at any time, misconduct will be found if an employee tests positive to an illegal drug and the test was ordered because the employer believed that the employee's behavior at work was impaired because of the use of illegal drugs. Examples of impairment are slurred speech, uncharacteristic behavior or inability to perform work. As with random drug testing, the drug test must be valid.

Sexual Harassment

Misconduct includes established acts of sexual harassment. For unemployment insurance purposes the meaning of sexual harassment is not limited to the definition under the Wisconsin Fair Employment Law (ss 111.32 (13) and 111.36 (1)(b), Wis. Stat.). Sexual harassment may be either direct or indirect. Direct sexual harassment includes but is not limited to: unwelcome sexual advances or contact, and verbal or physical sexual conduct such as displaying sexually graphic materials or making sexual gestures or comments. Indirect sexual harassment can occur by allowing sexual harassment to occur, by not responding to complaints of sexual harassment, or by allowing an intimidating, hostile, or offensive work environment to develop or continue.

Patient Abuse

If an employee is discharged for patient abuse, the burden for establishing that such abuse actually occurred is upon the employer. Chapter DWD 132.05 (which can be found in the back of Wisconsin's UI Law Text) outlines actions that are considered abusive while at the same time cautioning employers that there must be competent evidence of such actions.

D. DISCIPLINARY SUSPENSION

Section 108.04(6)

If the following conditions are met, UI benefits will not be paid for the week that the suspension was imposed and the following 3 weeks or for the duration of the suspension, whichever is shorter.

1. The reason for the suspension is connected to the employee's work.
2. The suspension is for good cause. When the suspension is a reasonable action on the part of the employer in response to an employee's inappropriate work behavior or work rule violation, it is usually considered to be good cause. The employer's action is considered reasonable when the employer can establish that the inappropriate behavior was within the employee's ability to control or that the employee was responsible for the work rule violation. Generally, if another employer would suspend when faced with the same circumstances, the suspension is considered reasonable and for good cause.

Examples of a suspension with good cause:

- A suspension for absenteeism without valid reasons or proper notice after prior warnings have failed to correct the attendance problem.
- A suspension pending investigation of actions by the employee that may be considered patient abuse.

The employer must be prepared to provide the dates of the suspension, the reason for the suspension, and the dates of prior infractions and warnings if they have a bearing on the suspension.

Employees may be suspended prior to discharge. This would be appropriate when an investigation into employee behavior is being conducted, or when the person with the authority to discharge is not immediately available. If the employee claims benefits while suspended, this is the issue that will be investigated. However, if the employee is then discharged prior to returning to work, the issue of the discharge must be investigated.

It is important to notify the department if a disciplinary suspension is changed to a discharge or if the employee fails to return to work at the end of the suspension.

E. EMPLOYEES OF EDUCATIONAL INSTITUTIONS

Sections 108.02(10m), (22m) and 108.04(17)(a)-(k); DWD 132.04

Benefits are not payable to educational (school year) employees:

- Between academic years or terms or during customary vacation periods or holiday recesses **IF**
- The employee has reasonable assurance of similar work in the following term or during the period immediately following the vacation period or holiday recess.

School year employees are individuals who are not hired to work on a year-round basis and who work for:

- Public and private educational institutions;
- Cooperative Educational Service Agencies;
- Government units, Indian tribes, and nonprofit organizations which provide services to or on behalf of educational institutions.

An **educational institution** is a school which provides education and/or training, maintains a regular faculty and curriculum and has a regular, organized body of students in attendance.

Reasonable assurance occurs if the terms and conditions of the work to be performed in the subsequent academic year or term, or in the period immediately following a vacation period or holiday recess, are reasonably similar to the terms and conditions of the work the employee performed in the prior academic year or term, or in the period immediately preceding a vacation period or holiday recess.

Work is **reasonably similar** if:

- The work is of a similar capacity (e.g. - an individual who worked in a professional capacity will be working as a professional);
- The work is for the same type of employer (e.g. - the only type of employer similar to an educational institution is another educational institution);

- The gross weekly wage is more than 80% of the weekly wage earned in the prior academic year or term;
- The number of hours the individual will be working is more than 80% of the average number of hours worked in the prior academic year or term; and
- The work involves substantially the same skill level and knowledge as the work performed in the prior academic year or term.
- In addition, for customary vacation periods and holiday recesses, the individual must have worked during the period immediately prior to the vacation period or holiday recess and have reasonable assurance of performing similar work in the period immediately following the vacation period or holiday recess.

If the individual who has filed a claim for unemployment insurance worked for you as a school year employee, enter the phrase “school year employee” on Form UCB-16 or Form UCB-23. If an individual who was not given reasonable assurance is provided assurance of similar work at a later date, notify the department when that assurance is given.

Be prepared to provide the following information:

- The type of work performed by the employee;
- The kind of work the employee will be performing in the next academic year, term, or following the vacation period or holiday recess.
- The terms and conditions of the work performed (e.g. rate of pay);
- If the individual has reasonable assurance of similar work in the next academic year, term or during the period immediately following a vacation or holiday recess;
- The date the prior academic year or term ended;
- The starting date of the next academic year or term.

A school year employee who does not have reasonable assurance will be advised to contact the department as soon as he/she receives reasonable assurance of similar work. If the individual is offered work and refuses it, contact the UI Division at the employer assistance telephone number shown on the back of the handbook.

Any benefits paid beyond the week in which reasonable assurance is obtained will be considered to have been erroneously paid. If you did not identify the individual as a school year employee, your account will be charged for any erroneously paid benefits.

Benefits are retroactively payable to any nonprofessional school year employee who was given reasonable assurance of similar work but then was not offered the opportunity to perform such work, if the individual is otherwise eligible.

F. EXCLUDED EMPLOYMENT

Section 108.02(15)

Employment can be excluded for tax purposes and/or for benefit purposes. When work is excluded for tax purposes, it is also excluded for benefit purposes. However, there are some kinds of employment that are taxable yet excluded for benefit purposes. (See Section 2 for more information about employment excluded for tax purposes.)

When employment is excluded for benefit purposes, the wages from such employment cannot be included as base period wages to determine if the claimant has met the qualifying requirements, nor can they be used to compute the claimant’s benefit entitlement. However, claimants must report work and wages from excluded employment on their weekly claim certifications and the partial wage formula is applied to these wages when determining the amount of benefits payable for a week of unemployment.

Benefit exclusions are categorized by type of employer. Some apply only to governmental units, some apply only to private employers, others apply only to nonprofit employers, etc.

The chart on the next two pages shows the types of employment that are potentially excluded for benefit purposes. In each case, certain conditions must be met before a finding can be made that the employment is excluded.

➤EMPLOYMENT THAT IS EXCLUDED FOR BENEFIT PURPOSES◀

ALL EMPLOYERS

Employment:

- as a work study student.
- as a student nurse in the employ of a hospital.
- as a medical intern in the employ of a hospital.
- as a patient in the employ of a hospital.
- for an organization tax exempt under Sec. 501(a) or 521 of the IRS Code if wages paid are less than \$50 in a quarter.
- By a nonresident alien or the spouse or minor child of a nonresident alien temporarily present in the U.S. as a nonimmigrant under 8 USC 1101 (a)(15)(F), (J), (M), or (Q).

ALL EMPLOYERS

EXCEPT GOVERNMENT UNITS AND NONPROFIT ORGANIZATIONS

(An asterisk indicates that the employment is taxable but excluded for benefit purposes. All types of employment without an asterisk are excluded for both tax and benefit purposes.)

Employment:

- that meets the definition of agricultural labor by section 108.02(2) and which is not covered for tax purposes.
- in domestic service that is not covered for tax purposes.
- as a caddy on a golf course.*
- as a news carrier, selling or distributing on the street or from house-to-house (if over 18 years of age*).
- for the railroad.*
- as an insurance agent or solicitor paid solely by commission.
- as a real estate agent or salesperson paid solely by commission.
- as an unpaid corporate officer or an unpaid manager of a limited liability company.
- for a sole proprietorship that is owned by the claimant's spouse, child, or the claimant's parent if the claimant was under 18 years of age when the work was performed.
- for an employer who processes fruits and vegetables if 1) the work was performed solely during the active processing season(s), 2) the base period wages from the employer are less than those needed to qualify for a benefit year, and 3) the claimant did not earn at least \$200 in covered employment from another employer in the year before his first day of work for the processing employer. This exclusion is investigated separately for each calendar year.*
 NOTE: The active processing seasons for employers engaged in processing fresh perishable fruits and vegetables in Wisconsin are considered to occur each year between the dates specified in Chapter DWD 145. The active processing seasons are shown on the next chart.
- as a court reporter paid on a per diem basis.*
- as a salesperson paid solely by commissions, overrides, bonuses or differentials related to the sales and who primarily conducts business in the customer's home.
- in maritime service excluded by FUTA.
- as a taxicab driver if (s)he has 1) leased the vehicle, 2) keeps all of the income from operating the taxicab, 3) receives no compensation from the owner, and 4) has a lease payment that is not affected by the amount of income made operating the taxicab.
- for a seasonal employer if the individual was employed for less than 90 days, has less than \$500 of covered base period wages from other employers, and received written notice before starting, that work they perform may be excluded for UI purposes.* (Also see Section 2, Part 2.)
- as a provider of private-duty or part-time intermittent nursing care, as a nurse practitioner, or as a provider of respiratory care to ventilator-dependent patients, if the individual has an independent practice, is not employed by a home health agency, is certified by DHFS, and medical assistance reimbursement is available as a covered service.
- as a corporate officer if the corporation has elected to exclude the wages of its officers for tax purposes. (Also see Section 2, Part 2.)

GOVERNMENT UNITS, INDIAN TRIBES OR NON PROFIT ORGANIZATIONS ONLY

Employment:

- by an individual as part of a work relief or work training program financed in whole or part by the federal or state government.
- by an individual receiving rehabilitation or remunerative work in a sheltered workshop.
- by an inmate of a custodial or penal institution.

** Chart is continued on the next page. **

GOVERNMENT UNITS OR INDIAN TRIBES

Employment:

- as an elected official.
- as an official appointed to fill an elective office vacancy.
- as a member of a legislative body or judiciary.
- as member of the Wisconsin national guard.
- as an employee hired to assist with a specific emergency situations which can include fire-fighting, removal of storm debris, etc.. This exclusion does not include permanent employees who perform these tasks, nor volunteer employees upon whom the government unit normally relies for such assistance.
- in a major nontenured policymaking/advisory job or a policymaking/advisory job of 8 hours or less per week.

NONPROFIT ORGANIZATIONS ONLY

Employment:

- for a church or convention or association of churches.
- for an organization operated for religious purposes.
- as a minister or member of a religious order.

EDUCATIONAL INSTITUTIONS ONLY

Employment:

- by a student enrolled and regularly attending classes at the institution.
- by the spouse of a student at the institution working under a program to provide financial support to the student.

Chapter DWD 145

➤ ACTIVE PROCESSING SEASONS FOR FRUITS & VEGETABLES IN WISCONSIN ◀ (Used to determine if employment with a fruit/vegetable processor is excluded.)

Fruit or Vegetable	Earliest Week	Latest Week
Apples	First week ending in September	Second week ending in November
Asparagus	First week ending in May	Third week ending in July
Beans	Second week ending in June	Last week ending in October
Beets	Third week ending in July	First week ending in December
Blueberries	First week ending in June	Last week ending in August
Cabbage	First week ending in July	First week ending in December
Carrots	Last week ending in July	First week ending in December
Celery	First week ending in July	First week ending in December
Cherries	Third week ending in June	Third week ending in August
Corn	Fourth week ending in July	Fourth week ending in October
Cranberries	Third week ending in September	Last week ending in November
Cucumbers	Third week ending in July	Third week ending in October
Onions	Third week ending in July	Third week ending in October
Peas	First week ending in June	Third week ending in August
Peppers	First week ending in July	Third week ending in November
Potatoes	First week ending in July	First week ending in December
Pumpkin	First week ending in September	Third week ending in November
Rhubarb	Second week ending in May	Last week ending in October
Spinach (spring crop)	Third week ending in May	Last week ending in July
Spinach (fall crop)	Last week ending in August	Fourth week ending in November
Strawberries	First week ending in June	Third week ending in July
Squash	Second week ending in September	Third week ending in November
Tomatoes	First week ending in August	Fourth week ending in October
Turnips	Second week ending in August	First week ending in December

G. FAMILY CONTROLLED EMPLOYMENT

Section 108.04(1)(g) & (gm)

When an owner of a business or certain relatives of an owner file unemployment claims, the employer is required to report this information as an eligibility issue on Form UCB-16, Separation Notice, for each individual who files a claim. The following paragraphs explain how UI eligibility is determined for owners and specified family members employed by various types of family businesses.

Treatment of Limited Liability Companies (LLCs)

A single-member LLC will be treated as a sole proprietorship and a multimember LLC will be treated as a partnership. A LLC will be treated as a corporation only if: **1)** the LLC has filed an election with the federal Internal Revenue Service (IRS) to be treated as a corporation for federal tax purposes; **2)** the IRS has agreed to treat the LLC as a corporation; and **3)** the department receives proof (IRS Form 8832). For benefit purposes, the department will treat the LLC as a corporation as of the date the IRS applies the treatment or the date that proof is filed with the department, whichever is later.

Corporations or LLCs Treated as Corporations

Work performed for a family corporation, by either the claimant or the claimant's family members, is covered employment. However, base period wages from a family corporation cannot exceed 10 times the weekly benefit rate (WBR) based solely on that employment, when calculating the maximum benefit amount whenever:

- 25% or more of the ownership interest was owned or controlled, directly or indirectly, by the claimant; and/or
- 50% or more of the ownership interest in the corporation was owned or controlled, directly or indirectly, by the claimant, the claimant's spouse or child, the claimant's parent if the claimant was under the age of 18 at the time the work was performed, or a combination of any of these.

Example 1

Claimant owns 30% of the corporation and was paid \$20,000 in the base period, \$5,000 in each quarter.

Claimant's weekly benefit rate is 4% of high quarter wages (\$5000) = \$200

Claimant's base period wages are reduced to \$2000 (10XWBR).

Claimant's monetary entitlement (duration) is lesser of:

$$\$2000 \times .40 = \$800, \text{ or}$$

$$\$200 \times 26 = \$5200$$

Example 2

Claimant's spouse owns 60% of the corporation and the claimant was paid \$24,000 in the base period, \$6000 in each quarter.

Claimant's weekly benefit rate is 4% of high quarter wages (\$6000) = \$240

Claimant's base period wages are reduced to \$2400 (10XWBR).

Claimant's monetary entitlement (duration) is lesser of:

$$\$2400 \times .40 = \$960, \text{ or}$$

$$\$240 \times 26 = \$6240$$

If the business involuntarily ceases operation, base period wages will not be reduced as long as one of the following actions have taken place before the claimant files an initial claim application for benefits:

- Family corporation is dissolved due to economic inviability;
- Family corporation has filed for bankruptcy;
- All owners have filed for personal bankruptcy; or
- Disposition of a total of 75% or more of the assets of the family corporation by one of the following methods:
 - ⇒ Assignment for the benefit of creditors
 - ⇒ Surrender to one or more secured creditors or lienholders
 - ⇒ Sale of the assets to a non-related party due to economic inviability.

Partnerships or LLCs Treated as Partnerships

- Partners are not considered employees of their businesses and no benefits are payable to such individuals based on services for the partnership.
- Work performed by the partners' families is covered employment. However, if 50% or more of the ownership interest in the partnership is/was owned or controlled, directly or indirectly, by the claimant's spouse, child or parent (if the claimant was under age 18), or by a combination of these relatives; **then** the claimant's base period wages from the partnership cannot exceed 10 times the weekly benefit rate based solely on that employment, when calculating his/her maximum benefit amount.

Sole Proprietorships or LLCs Treated as Sole Proprietorships

- Sole proprietors are not considered employees of their businesses and no benefits are payable to such individuals based on services for the sole proprietorship.
- Work performed for a sole proprietorship by the owner's spouse, parent or child (if work was performed while under the age of 18) is excluded employment and no benefits are payable based on such employment. (For more information about "excluded employment", see item F in this part of Section 1 and also Part 2 of Section 2.)

H. FAMILY MEDICAL LEAVE

See "LEAVE OF ABSENCE"

I. INDEPENDENT CONTRACTOR

See Part 2 of Section 2 (Tax) entitled "Covered and Excluded Employment"

J. LABOR DISPUTE

Section 108.04(10)

An employee who is unemployed because of a strike or other bona fide labor dispute in the establishment in which (s)he is employed is not eligible for unemployment benefits based on wages for work performed before the labor dispute began.

Benefits can be paid based on work performed after the start of labor dispute if the claimant meets the qualifying wage requirements based on wages for that work alone.

If a labor dispute occurs in your establishment, call one of the benefit center employer assistance numbers shown on the back of this handbook as soon as possible. We will need to know:

- the date on which the dispute started,
- the nature of the dispute,
- the establishment(s) directly involved,
- the number of employees in such establishment(s),
- the number of employees who may become unemployed because of the dispute, and
- the first week during which each claimant was out of work because of the dispute.

K. LEAVE OF ABSENCE

Sections 108.04(1)(b)2 & 3 and (c)

When an **employee requests** and is granted a leave of absence **for a definite period of time**, (s)he is not eligible for unemployment benefits as of the week the leave begins. The disqualification continues through the week that the leave is to end **or** until the claimant returns to work, whichever occurs first. However, if the leave of absence is not under the Family and Medical Leave Act and is for only a portion of a week, the claimant's benefit check for that week will be reduced by the amount of wages that could have been earned had the leave of absence not been granted. Be prepared to provide the starting and ending dates of the leave, the date the claimant returned to work, and if applicable, the amount of wages that could have been earned had the leave not been granted. If the leave is specifically taken under the Family Medical Leave Act, it does not have to be requested for a definite period of time for this provision to apply, but the Act includes limitations on the length of the leave.

See Item V for information about a leave of absence requested for an undetermined

length of time that is not taken under the Family Medical Leave Act.

L. LOST LICENSE
Section 108.04(1)(f)

Some employees must possess a valid license issued by the government to perform their jobs. If this license is suspended, revoked or not renewed and the employee is at fault for losing the license, (s)he may not be eligible for unemployment benefits if you suspend or terminate the employee because (s)he can no longer perform his/her customary work for you due to the lost license.

When all of the required conditions exist for applying this section of law, the claimant is not eligible for any benefits as of the week in which the suspension/termination occurred. The disqualification continues for the next 5 weeks **or** until the license is reinstated or renewed, **whichever occurs first**.

If the claimant's license is not reinstated or renewed before the 5-week disqualification period ends, the claimant can start receiving unemployment benefits only if (s)he has remaining entitlement from wages paid by other liable employers. Your pro-rated share of these benefits is charged to the fund's balancing account.

Your account will not be charged for benefits paid to the claimant until the license is restored.

M. MEDICAL LEAVE
See "LEAVE OF ABSENCE"

N. PENSION PAYMENTS
Section 108.05(7)

Pension payments include periodic and lump sum payments from retirement accounts, pensions, annuities, some 401(k)s and railroad retirement payments. When certain criteria are met, weekly benefits are reduced by the percentage of the pension financed by the employer. Pension payments result in a dollar-for-dollar reduction of the amount of benefits

payable to the claimant for a given week. Pension payments are not treated the same as wages (see Part 6 for the treatment of "wages"). Pension payments not paid weekly are broken down to a weekly amount.

As of the week ending 01/11/03, Social Security Benefits [Retirement, Disability and Supplemental Security Income (SSI)] and disability payments from the Veterans' Administration do not reduce UI benefits.

O. PROFESSIONAL ATHLETES
Section 108.04(19)

Benefits are not payable to a claimant who was paid a substantial portion of the base period wages for work performed as a professional athlete, if the claimant has reasonable assurance of work as a professional athlete in the next sports season.

If this provision applies, enter the phrase "professional athlete - between seasons" on the benefit report. Indicate the ending date of the last season and the estimated beginning date of the next season. Explain how the claimant has reasonable assurance for work in the next season. Reasonable assurance generally requires a contract for the next season.

P. QUIT
Section 108.04(7)

If the claimant's reason for quitting is "not within the exceptions" specified in the law, (s)he is not eligible to receive benefits until 4 weeks have elapsed after the week of the quit and (s)he has earned wages in covered employment equal to at least 4 times the weekly benefit rate that would have been paid had the quit not occurred.

Once the claimant has requalified, (s)he is eligible to receive benefits based on the work performed prior to the quit. However, if you are a contributing employer (paying a quarterly UI tax), your account is not charged for benefits paid based on work performed for you before the claimant quit. If you are a reimbursable employer (billed monthly for UI benefits paid rather than

paying a quarterly UI tax), you are liable for your portion of the benefits paid after the claimant requalifies.

Notice of Benefit Charging, Form UCB-29

Often, a claimant has already satisfied the work requalification requirement for quitting a job with you before an unemployment claim is filed. When this happens, you are sent this notice to let you know 1) that we are aware that the claimant quit, 2) that (s)he has satisfied the work requalification requirement and 3) whether or not you will be charged for benefits based on work performed before the quit. See Part 9 for more information about this form.

(NOTE: Even if you are not charged for the benefits being paid to a claimant, you will continue to receive correspondence about the claim if benefits are being paid based on work performed for you. This correspondence does not mean that you are now going to be charged for benefits.)

Exceptions

There are a number of reasons for quitting for which benefits can be paid without imposing the standard disqualification. Each exception requires certain conditions be met before it can be applied. Most exceptions permit the immediate payment of benefits but some carry a short disqualification period or a lesser work requalification requirement than the standard disqualification. You will be contacted before a decision is issued that applies an exception to the standard quit disqualification.

Many of the exceptions relieve contributing employers of liability for benefits paid based on work performed before the quit. However, this relief of liability does not apply to reimbursable employers.

The following chart includes a brief description of all of the current exceptions, whether the exception imposes any disqualification and whether contributing employers will be charged for benefits.

➤EXCEPTIONS TO THE STANDARD QUIT DISQUALIFICATION◀		
Conditions Required to Apply Each Exception	If the Exception Applies, is there Any Disqualification?	If the Exception Applies, are Contributing Employers Relieved of Charges?
Accepting a layoff • in lieu of another employee.	No	No
Quitting with good cause attributable to the employer. • “Good cause” is interpreted as a valid, substantial reason for which the employer is responsible and which leaves the employee with no reasonable alternative but to quit. • “Good cause” includes a request, suggestion or directive by the employer that the employee violate federal or state law. • “Good Cause” includes established acts of sexual harassment by the employer, the employer’s agent or by a co-worker if the employer knew or should have known but failed to take timely and appropriate corrective action. (Refer to the paragraph at the end of this chart for an explanation of what is considered sexual harassment.)	No	No
Quitting because: • the employee’s health or the health of a member of the employee’s immediate family • left the employee with no reasonable alternative but to quit.	Yes. Benefits are denied until the claimant is able to perform 15% of the suitable jobs in his/her labor market.	Yes
Quitting because: • the employer required that the employee transfer to a different shift than (s)he was hired to work, • the new shift results in a lack of child care for his/her minor children, and • (s)he is able to work full-time on the shift that (s)he last worked for the employer.	No	No
Quitting: • to accept a recall to work for a former employer • if the quit occurs within 52 weeks after the employee last worked for the recalling employer.	No	Yes
Quitting a job: • within the first 10 weeks • which the employee could have refused with good cause or • which does not meet labor standards with regard to wages, hours or other conditions.	No	Yes
Quitting because: • the employee was transferred to work • paying less than 2/3 of his or her immediately preceding wage rate.	Yes. The claimant is disqualified the week of the quit and the next 4 weeks.	No

**** Chart is continued on the next two pages. ****

<p>Quitting a job when:</p> <ul style="list-style-type: none"> • the employee maintained a temporary residence near the job and • quit that job to return to his or her permanent residence • because the available work was reduced to less than 20 hours per week for at least 2 consecutive weeks. 	No	No
<p>Leaving a job because</p> <ul style="list-style-type: none"> • the employee reached employer's compulsory retirement age. 	No	No
<p>Quitting</p> <ul style="list-style-type: none"> • a part-time job • because loss of a full-time job made it economically unfeasible for the employee to continue the part-time work. 	No	Yes
<p>Quitting to take another job that:</p> <ul style="list-style-type: none"> • offers at least the same average weekly wage, • offers at least the same hours of work, • offers significantly longer term work, or • offers work significantly closer to the employee's home; and • is covered employment for unemployment purposes. 	Yes. The claimant is disqualified until (s)he earns wages on the new job of at least 4 times his/her weekly benefit rate.	Yes
<p>Quitting to take another job:</p> <ul style="list-style-type: none"> • while claiming benefits for partial unemployment • that offers a higher average weekly wage; and • is covered employment for unemployment purposes. 	No	Yes
<p>Quitting a job:</p> <ul style="list-style-type: none"> • with a labor organization • if the termination causes the employee to lose seniority rights granted under a collective bargaining agreement and • if the termination results in the loss of the employee's employment with the employer which is a party to that collective bargaining agreement. 	No	No
<p>Quitting a job:</p> <ul style="list-style-type: none"> • as a part-time elected or appointed member of a governmental body or representative of employees • which paid wages of not more than 5% of the employee's base period wages • if the quitting occurred while the employee was working for another employer. 	No	No
<p>Quitting:</p> <ul style="list-style-type: none"> • one or more concurrently held jobs • if at least one of the jobs consisted of more than 30 hours per week and • the employee quits before receiving notice of termination from one of the jobs consisting of more than 30 hours per week. 	No	Yes

Quitting a job <ul style="list-style-type: none"> • held concurrently while serving in the military • if the quitting was the result of an honorable discharge from active military duty. 	No	Yes
Quitting a job: <ul style="list-style-type: none"> • with a family corporation because of an involuntary cessation of the business • if 50% was owned by the claimant, the claimant's spouse, children, brothers or sisters, the claimant's parent if the claimant was under the age of 18, or a combination of 2 or more of these individuals. 	No	No
Quitting a job <ul style="list-style-type: none"> • due to domestic abuse, concerns about personal safety or harassment or personal safety or harassment of family members who reside with him/her or of other household members • if a temporary restraining order or injunction was obtained prior to quitting and is reasonably likely to be violated. 	No	Yes
<u>Sexual Harassment as it relates to Quitting with “Good Cause Attributable” to the Employer</u> For unemployment insurance purposes the meaning of sexual harassment is not limited to the definition under the Wisconsin Fair Employment Law [111.32(13) and 111.36(1)(b), Wis. Stats.]. Sexual harassment may be either direct or indirect. Direct sexual harassment includes but is not limited to: unwelcome sexual advance or contact, and verbal or physical sexual conduct such as displaying sexually graphic materials or making sexual gesture or comments. Indirect sexual harassment can occur by allowing sexual harassment to occur, by not responding to complaints of sexual harassment, or by allowing an intimidating, hostile, or offensive work environment to develop or continue.		

Voluntary Reduction of Hours

If an employee requests to reduce his/her hours of work, this reduction may be considered a quit. If so, the wages that the employee earns from you while working the reduced hours cannot be used to satisfy the requalification for quitting as long as you notify the employee in writing that this may be the result of such a request before you grant the request. If after receiving this written notification the employee decides not to reduce his/her hours, the employee will not be considered to have quit, even if you do not allow him/her to continue working the original number of hours.

The following is suggested wording for the written notification to be given to employees who voluntarily request a reduction in hours:

"Because you have requested a voluntary reduction in the number of hours you are working, you are notified that for Wisconsin Unemployment Insurance purposes, your reduction in hours may be considered a quit. Any wages that you earn while you are working the reduced hours may not be used to satisfy the quit requalification provision."

Special Guidelines for Temporary Help Agencies

The employment relationship in the temporary help industry is different from the employment relationship that exists in most other industries. In the temporary help industry, employees are generally assigned to a series of short-term assignments.

Commonly, when an assignment ends, there will be a short delay before the next assignment begins. Because both parties acknowledge and accept this as a condition of the employment relationship, the short break between assignments may not terminate the employment relationship.

For a temporary help employer, as would be true with any other employer, if at the time an assignment ends the employer does not have an additional assignment for the employee, the employment relationship ends. If the employer does have another assignment for the employee, the employment relationship continues to exist, and an employee who refuses the next assignment is then considered to have voluntarily quit.

Due to the unique nature of the temporary help industry, the following guidelines are applied:

- When an employee who was instructed to contact the temporary help agency at the end of an assignment fails to do so, that failure is likely to be considered a voluntary quitting of the employment.
- When at the time an assignment ends, the temporary help agency does not have an immediate assignment for the employee, but is able to assure the employee that it will have an assignment within seven days, the employment relationship continues to exist. If for some reason the expected assignment does not materialize within the seven days, but the employer notifies the employee that it will have an assignment within another seven days, the employment relationship is extended for those seven days. An employee who refuses the subsequent assignment is likely to be considered to have voluntarily quit.

- An employee who leaves an assignment before it is completed is considered to have quit unless the temporary help agency agrees to the early termination of the assignment and offers to find the employee another assignment.
- When an assignment ends and the employer is unable to provide another assignment or assure the employee of another assignment within seven days, the employment relationship is terminated due to lack of work. Likewise, if the temporary help employer is initially able to assure the employee of an assignment within seven days, but is later unable to provide such an assignment, the employment relationship also ends due to a lack of work. Once an employment relationship has ended, any later offer of work by the employer would be considered a “new offer of work” and failure to accept such an assignment is regarded as a failure to accept an offer of new work (see Item R, “Refused Work”).

Q. REDUCTION IN HOURS AT EMPLOYEE’S REQUEST

See “QUIT” (Voluntary Reduction of Hours)

R. REFUSED WORK Section 108.04(8) & (9)(b)

This section applies when a claimant fails to accept an offer of work which is made by a prospective employer and which is actually received by the claimant. It also may apply when a claimant is recalled to work by a former employer but does not receive the notice of recall.

The job offer must be a bona fide attempt to secure the claimant’s services. It is an unconditional offer of work that the claimant has the opportunity to accept or reject and all the specifics of the job (wages, hours, duties and other conditions) must be explained or available to the claimant simply by requesting them of you.

Benefits, by law, cannot be denied for refusing new work if the wages, hours or other conditions are less favorable than

those prevailing for similar work in the locality. New work is:

- an offer of work to someone with whom you have never had a contract of employment; or
- an offer of re-employment to someone you do not have a contract of employment with at the time you offer the work; or
- an offer of continued employment to a present employee but with different duties or conditions of work than those you both agreed to in the existing contract of employment.

(NOTE: See Item P for application of “new work” to offers made by temporary help agencies.)

The claimant may have “good cause” for refusing a job. If so, and the claimant is able to work and available for suitable work in his/her labor market, benefits would be allowed.

If a claimant refuses an offer of work from you, or fails to return to work for you after being duly recalled, notify the department immediately, providing:

- the claimant's name and social security number,
- the type of work offered,
- the rate of pay, the hours (or shift),
- the date on which the refusal occurred,
- the date on which the claimant could have begun work and
- the reason the claimant gave, if any, for refusing the work offered.

If it is determined that a claimant refused a bona fide offer of suitable work from you without good cause and the wages, hours and other conditions of the job were not substantially less favorable than those prevailing for similar work in the locality, benefits will be denied. The claimant is ineligible until 4 weeks have elapsed after the week the job was to begin and (s)he has earned wages in covered employment equal to at least 4 times the weekly benefit rate that would have been paid had the claimant not been disqualified. Once the claimant has requalified, (s)he is again

eligible to receive benefits, but if you are a contributing (taxable) employer, your account is not charged for benefits paid that are based on work performed prior to the work refusal.

S. SCHOOL YEAR EMPLOYEES

See “EMPLOYEES OF EDUCATIONAL INSTITUTIONS”

T. SELF-EMPLOYMENT

108.02(12) & DWD 127.09

Self-employment is defined as the formation, development or operation of a trade, a business, an enterprise or a profession for the purpose of producing income. It generally takes the form of a sole proprietorship or a partnership.

Benefits are not payable to a self-employed individual if the self-employment activities substantially limit his/her availability for work with other employers.

All individuals claiming UI benefits, including self-employed claimants, must search for work unless specifically excused. (See Part 3.)

Self-employment income is not treated as wages which would reduce benefits paid for a week of unemployment.

U. STUDENTS

See “UNABLE/UNAVAILABLE FOR WORK”

V. UNABLE/UNAVAILABLE FOR WORK

Sections 108.04(2)(a), 108.04(1)(b)1 & DWD 128

An individual who is totally unemployed must be able to work and available for work while filing for unemployment benefits. If the claimant has a restriction that prevents or restricts his/her ability or availability for work, the issue may affect his/her eligibility for benefits. A person filing for benefits makes a weekly certification and one of the questions asked is: “Were you able to work full-time and available for full-time work?” The individual is expected to answer this question “no” if his/her availability is restricted in any way.

- A person with a **controllable restriction** (transportation, school attendance, child care, etc.) must be able and available for at least 50% of full-time suitable jobs in the labor market.
- A person with an **uncontrollable restriction** (a physical restriction, etc.) must be able and available for at least 15% of all suitable work in the labor market.

When a claimant has a work restriction and does not meet the above requirements, (s)he is not eligible to receive unemployment benefits until the able and available requirements are again met.

This disqualification is applicable:

- when a claimant's work is suspended or terminated because of work restrictions,
- when a claimant is on a leave of absence for an indefinite period of time (not under the Family Medical Leave Act), and
- when there is no employment relationship currently affected, but the claimant's availability for potential employment is reduced by the work restrictions.

NOTE: If you have an individual working for you who misses work during a given week, the issue is usually resolved under the "work available" statute. See item Y, which explains the work available provision.

Students

A student is generally considered unavailable for work while attending school, however there can be exceptions. A student attending a night course who is still available for full-time day shift work would normally be able and available for work. The law also makes an exception for someone who is in "approved training" [Section 108.04(16)]. Approved training is training through a vocational school or a school offering vocational training that has been approved by the department. Attendance at a college or university is not normally considered approved training.

W. WAGES AND OTHER INCOME

Section 108.05(3)(a), (4) & (5)

When it is not clear or there is a dispute as to whether a payment should be considered benefit year wages, or when wages or other types of income are not reported by the claimant on a weekly certification for a benefit check, an investigation is conducted. The department will issue a determination to establish whether or not the payment is to be considered wages and if so, what effect the wages have on the amount of benefits payable. (See Part 6 for detailed information about the definition of benefit year wages.)

If the investigation involves the claimant's failure to report the wages or payment, an investigation as to whether or not the claimant concealed the wages/pay is also conducted. (See Part 8 for more information about Fraudulent Claims.)

X. WALKING OFF THE JOB

See "QUIT"

Y. WORK AVAILABLE WITH CURRENT EMPLOYER

Section 108.04(1)(a)

Work available generally applies to the claimant who is filing claims for partial unemployment benefits while working for an employer and who misses work during a week (for example, absence during the week due to illness or personal business).

For this provision to be applied, the claimant must have received actual or implied notice of the work that could have been performed. An employee with a regular work schedule has sufficient notice of available work. "Due notice" for an employee whose schedule changes from week to week may or may not be satisfied, depending on when the schedule is received and the circumstances involved for the absence.

When a decision is made that the claimant had due notice of additional work in a week, the additional gross wages the claimant could have earned are added to actual gross wages earned and other pay received

for the week when determining the amount of partial unemployment benefits payable for the week.

Z. WORK SEARCH

Section 108.04(2)(a) & DWD 127

Some claimants are not required to look for work because one of the waiver provisions applies to their claim. The most common waiver provisions are listed in Part 3.

If a claimant is required to look for work, each week on the weekly certification for a payment, (s)he must answer the question: "Did you contact at least two employers during the week to try to find work?". If the claimant did not look for work in that week, (s)he is expected to answer this question "no". When a claimant answers "no" to this question, the Department conducts an investigation.

The Department will initiate an investigation regarding the claimant's work search efforts without this notification from the claimant whenever there is sufficient reason to believe that the requirement is not being met.

A claimant who is required to make a search for work but fails to do so is ineligible for benefits for the week(s) in which such failure occurred.